

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

ROBERT ALEXANDER ALBANO,)	
a/k/a ALEX ALBANO,)	
)	
Plaintiff and)	8:06CV229
Counterclaim Defendant,)	
)	
v.)	
)	
UNITED STATES OF AMERICA,)	ORDER
)	
Defendant and Counter-)	
claim Plaintiff,)	
)	
v.)	
)	
WILLIAM A. ALBANO and WILLIAM A.)	
ALBANO as Personal Representative)	
of the Estate of MARY JO ALBANO,)	
deceased,)	
)	
Additional Counterclaim)	
Defendants.)	
_____)	

This matter is before the Court on additional counterclaim defendants' motion for partial summary judgment (Filing No. 61). The United States filed a counterclaim against William Albano, in his individual capacity and as personal representative of the estate of Mary Jo Albano (collectively "counterclaim defendants"), claiming the counterclaim defendants were liable under 26 U.S.C. § 6672.¹ Counterclaim defendants

¹ Section 6672 reads, in pertinent part:

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in

move for partial summary judgment, arguing that they were not liable as a matter of law because they were not "responsible persons" under § 6672.

Having reviewed the motion, the parties' briefs and evidentiary submissions,² and the applicable law, the Court finds that there are issues of credibility of witnesses and material issues of fact which preclude summary judgment. For these reasons, the counterclaim defendants' motion should be denied. Accordingly,

IT IS ORDERED that counterclaim defendants' motion for partial summary judgment is denied.

DATED this 22nd day of October, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

26 U.S.C. 6672(a).

² Counterclaim defendants' brief in support of motion for summary judgment (Filing No. 62) does not comply with NECivR 56.1(a). The brief contains a factual background with citations to the record; however, the paragraphs are not numbered as required by NECivR 56.1(a)(2). Counsel is advised to review the local rules.